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EXAMINER

WORRELL JR, LARRY D

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 10/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

S.M.

Office Action Summary	Application No.	Applicant(s)
	10/085,066	RELATS ET AL.
	Examiner Danny Worrell	Art Unit 3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on ____.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-11 is/are pending in the application.

4a) Of the above claim(s) ____ is/are withdrawn from consideration.

5) Claim(s) ____ is/are allowed.

6) Claim(s) 1-11 is/are rejected.

7) Claim(s) ____ is/are objected to.

8) Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on ____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on ____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. ____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.

4) Interview Summary (PTO-413) Paper No(s). ____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: ____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: The term “weave” used through out the specification is confusing since the article is a knitted article not a woven article. Appropriate correction is required.

Claim Objections

2. Claim 10 is objected to under 37 CAR 1.75(c) as being in improper form because a multiple dependent claim must be stated in the alternative only. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

Claim Rejections - 35 USC § 112

3. Claims 1-11 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 provides for the use of a warp knitting machine, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

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Claim 1 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Re claim 2, the recitation “cables conduits and the like” is indefinite as to the metes and bounds of the claim. The term “weave” is inaccurate since the article is knitted. Correction is needed wherever applicable.

Re claim 10, the recitation “claims 2 10 to 8” is unclear as to what claim is being referenced.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Ribarev et al. (4781039).

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Ribarev et al. (4781039) teaches the invention as claimed including a warp knit tube for cables conduits or the like knitted with a chain stitch. Note the two tubes of figure 20 and the resin (R).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ribarev et al. (4781039).

Ribarev et al. (4781039) teaches the invention as claimed as set forth above in the rejection tot claims 1 and 2. Ribarev et al. (4781039) does not teach the use of two different yarns, the specific yarn sizes or a resin. It would have been obvious at the time the invention was made to one of ordinary skill in the art to which the invention pertains to provide two different yarn materials in order to diversify the physical properties of the knitted tube. Additionally, It would have been obvious at the time the invention was made to one of ordinary skill in the art to which the invention pertains to choose from a number of different yarn sizes including those claimed since such a modification would have involved a mere change in the size of a component.

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A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Allowable Subject Matter

8. Claims 4, 5 and 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Danny Worrell whose telephone number is (703) 308-0889. Messages placed on voice mail will be returned by the end of my next business day.

The fax phone number for this Group is (703) 308-0758.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

Any inquiry concerning the Draftsperson's drawing review should be directed to the Chief Draftsperson whose telephone number is (703) 305-8404.

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LDW
October 1, 2002



Danny Worrell
Primary Examiner
TC 3700